



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

December 30, 2002

Mr. Brad Norton  
Assistant City Attorney  
City of Austin  
P.O. Box 1546  
Austin, Texas 78767-1546

OR2002-7442

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#174271.

The City of Austin (the "city") received a request for the full reports of the past criminal offenses of a named individual. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Under *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989), where an individual's criminal history information has been compiled or summarized by a governmental entity, the information takes on a character that implicates the individual's right of privacy in a manner that the same individual records in an uncompiled state do not. Thus, when a requestor asks for unspecified information concerning a certain named individual and that individual is a possible suspect, arrestee, or defendant, a law enforcement agency must withhold this information under section 552.101 because that individual's privacy right has been implicated. *See id.* In this instance, we believe that the named individual's right to privacy has been implicated by the request. Thus, we have marked the records in which the named individual is identified as a suspect, arrestee, or offender that must be withheld under section 552.101 of the Government Code and *Reporters Committee*.

Section 552.101 also encompasses information protected by other statutes. Although section 51.14(d) of the Family Code was repealed by the Seventy-fourth Legislature, Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2590 (current version at Family Code §§ 58.007 et seq.), the repealing bill provides that "[c]onduct that

occurs before January 1, 1996, is governed by the law in effect at the time the conduct occurred, and that law is continued in effect for that purpose.” *Id.* § 106, 1995 Tex. Gen. Laws at 2591; Open Records Decision No. 644 at 5 (1996). Section 51.14(d) provides in pertinent part:

(d) Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records [of a child] are not open to public inspection nor may their contents be disclosed to the public, but inspection of the files and records is permitted by:

- (1) a juvenile court having the child before it in any proceeding;
- (2) an attorney for a party to the proceeding; and
- (3) law-enforcement officers when necessary for the discharge of their official duties.

Section 51.02(1)(A) defines “child” as a person who is ten years of age or older and under seventeen years of age. We agree that certain documents concern juvenile conduct that occurred prior to January 1, 1996. Therefore, we have marked the documents that are confidential under section 51.14(d) of the Family Code and must be withheld from disclosure pursuant to section 552.101 of the Government Code.

Section 552.108 states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure “if release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). You inform us that some of the requested information pertains to pending cases. We therefore believe that the release of the information “would interfere with the detection, investigation, or prosecution of crime.” *Id.*

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref’d n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic front page offense and arrest information you may withhold the document we have marked from disclosure based on section 552.108(a)(1). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov’t Code § 552.007.

In summary, we have marked the information that the city must withhold under section 552.101 in conjunction with *Reporters Committee* and former section 51.14(d) of the Family Code. We have also marked the information that the city may withhold under section 552.108(a)(1) after release of the basic information as required by section 552.108(c).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Heather Ross".

Heather Pendleton Ross  
Assistant Attorney General  
Open Records Division

HPR/sdk

Ref: ID# 174271

Enc: Submitted documents

c: Ms. Lily Molina  
4912 Brighton Road  
Austin, Texas 78745  
(w/o enclosures)